

HOMELESS MANAGEMENT INFORMATION SYSTEM

AGENCY PARTICIPATION AGREEMENT

This Middlesex County Homeless Management Information System “MC HMIS”) Agency Participation Agreement (“**Agreement**”) is effective this 1st day of April, 2016 (“**Effective Date**”) by and between **Coming Home of Middlesex County, Inc.** (“**Coming Home**” or “**Administrator**”), a nonprofit corporation with offices located at 75 Bayard Street, 2nd Floor, New Brunswick, NJ 08901, and _____ [*insert agency name*], a _____ [*insert type of entity*], (“**Agency**”) with principal offices located at _____.

RECITALS

WHEREAS, Middlesex County has adopted a Ten Year Plan to End Homelessness and organized the establishment of the Middlesex County Continuum of Care (the “**MC CoC**” or “**Continuum**”); and

WHEREAS, HMIS is a client information system that records the use of housing and services, which can be used to determine the utilization of services of participating agencies, identify gaps in the local service continuum and develop outcome measurements; and

WHEREAS, the purpose of the HMIS is to enable government agencies, service providers, homeless consumers and other stakeholders to understand the scope of homelessness in Middlesex County, to improve service delivery to homeless persons and to evaluate the effectiveness of service interventions; and

WHEREAS, the MC CoC desires to operate a HMIS system where as much information as possible is shared among the HMIS users in order to allow for more system efficiency, and better coordination and collaboration among MC CoC members; and

WHEREAS, the CoC members formed a committee to research and compare HMIS software vendors in furtherance of the Continuum’s objective, the result of which was to choose the software developed and run by Bowman Systems L.L.C. (“**Bowman**” or “**Bowman System**”); and

WHEREAS, Middlesex County, on behalf of the MC CoC, received an award from the United States Department of Housing and Urban Development’s (“**HUD**”) to assist the MC Continuum to meet the HUD HMIS requirements through use of the Bowman System; and

WHEREAS, Middlesex County, with the approval of the MC Continuum, has contracted with Coming Home to be the Administrator or Lead Agency of the MC HMIS;

NOW, THEREFORE in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Coming Home and Agency hereby agree as follows:

1. **General Understandings:**

- a) The MC HMIS, a shared human services database, allows authorized personnel at homeless and human service provider agencies throughout Middlesex County, to enter, track, and report on information concerning their own clients and to share information, subject to appropriate controls contained herein, on common clients.

MC HMIS's goals are to:

- Improve coordinated care for and services to homeless persons in Middlesex County,
- Provide a user-friendly and high quality automated records system that expedites client intake procedures, improves referral accuracy, and supports the collection of quality information that can be used for program improvement and service-planning, and
- Meet the reporting requirements of the HUD, State agencies and other funders as needed.

In compliance with all State and federal requirements regarding client/consumer confidentiality and data security, the HMIS is designed to collect and deliver timely, credible, quality data about services and homeless persons or persons at risk for being homeless. Coming Home administers the MC HMIS through a subcontract with Middlesex County on behalf of the MC Continuum.

- b) Agency understands that when it enters information into MC HMIS, all such information will be available to Administrator staff who may review the data to administer HMIS; to conduct analyses in partnership with Middlesex County, the MC Continuum and appropriate public and private funding entities; and to prepare reports that may be submitted to others in De-identified form. Such Administrator staff will execute a Confidentiality Agreement regarding the privacy of all Identified Information, which is available for public review upon request.
- c) Agency understands that one of the goals of the MC HMIS is to allow for the sharing of some Identified Information among Partner Agencies to the extent necessary to most efficiently and effectively provide services to the Client and that Agency is responsible for determining and designating in HMIS if information may not be so shared by virtue of Client, or legal, prohibition.
- d) Definitions:
- (i) "Agency staff" refers to both paid employees and volunteers.
 - (ii) "Client" refers to a consumer of services;

- (iii) “De-identified Information” refers to data that has specific Client demographic information removed, allowing use of the data ***without identifying*** a specific Client. Also referred to as “non-identifying” information.
- (iv) “Enter(ing)” or “entry” refers to the entry of any Client information into HMIS.
- (v) “Identified Information” refers to Client data that can be used to identify a specific Client. Also referred to as “Confidential” data or information.
- (vi) “Partner Agency” or “Agency” refers generally to any Agency participating in MC HMIS.
- (vii) “Shar(e)(ing),” or “Information Shar(e)(ing)” refers to the sharing of information which has been entered in HMIS with another Partner Agency.
- (viii) “State” means New Jersey.

2. **Participation Fee:**

Agency agrees to pay an annual participation fee to Coming Home to receive access to, and participate in, the MC HMIS. The annual fee will be invoiced by, and payable to, Coming Home. The annual fee schedule is as follows:

2015 User Licensing Fees (no longer will include access to ART Report Gallery)

NUMBER of LICENSES	AGENCY COST
1-5	\$750
Up to 10	\$1,300
Up to 15	\$1,700

ART Report Gallery – Each Agency must obtain at least 1 ART Report Gallery License @ \$74/license.

Additional User Licenses above 15 per agency will be charged a one-time \$200 “start-up” fee per license, as well as \$195 annual license fee. These are the direct costs assigned by Bowman.

The annual fee is subject to change, in the sole discretion of Coming Home, based upon consideration of HUD awards for MC HMIS, and MC CoC recommendations concerning equitable Agency participation fees, based upon number of users.

3. **Administrator Services.**

Administrator agrees to provide support to Agency as outlined in the MC HMIS Policies & Procedures and as, without limitation, specifically set forth below:

- a) Four to five hours of initial training on the Bowman System;
- b) Ongoing technical support in terms of troubleshooting and assistance with report creation;
- c) Develop MC HMIS Policies and Procedures which may be modified as needed for the purpose of the smooth and efficient operation of the MC HMIS and announce any approved modifications in a timely manner;
- d) Establish the MC HMIS Policy Review Committee, which shall, among other things, develop protocols on customizing and releasing Middlesex County reports; and
- e) Communication with Bowman on behalf of Agency.

4. **General Agency Responsibilities.**

Agency is responsible for:

- a) Executing a Bowman System End User Agreement, attached hereto as **Exhibit A**;
- b) Reading and adhering to the MC HMIS Policies and Procedures concerning, without limitation, data privacy, data security and data quality, which are attached hereto as **Exhibit B** and are accessible on the website of Coming Home;
- c) Training all Agency end users of MC HMIS on all protocols, laws and regulations regarding the maintenance of data confidentiality, data security and data quality;
- d) Utilize the MIDDLESEX COUNTY HMIS – CLIENT ACKNOWLEDGEMENT FOR ELECTRONIC DATA COLLECTION form attached hereto as **Exhibit C**;
- e) Compliance with all Federal and State laws regarding protection of Client privacy applicable to it; and
- f) Review and compliance with all standards for privacy and security, appropriate for the Agency's particular organization, as set forth in the most recent rendition of the Department of Housing and Urban Development Homeless Management Information System (HMIS); Data and Technical Standards.

5. **Confidentiality: Protection of Client Privacy.**

- a) Agency will comply specifically with Federal confidentiality regulations as contained in the *Code of Federal Regulations, 42 CFR Part 2*, regarding disclosure of alcohol and/or drug abuse records.

- b) **If Agency is a “covered entity”** under the *Health Insurance Portability and Accountability Act of 1996, 45 C.F.R., Parts 160 & 164*, and corresponding regulations established by the U.S. Department of Health and Human Services, it will comply with all applicable requirements. **More information about “covered entities” can be found here:**
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html>
- c) **If Agency is subject to HIPAA**, (45 CFR 160 and 164) or 42 CFR Part 2, and if the transactions contemplated by use of MC HMIS are subject to HIPAA, a fully executed Business Associate Addendum must be attached to this agreement before information may be entered.
- d) Agency will designate any Client information which Agency is not authorized to share, under any relevant federal or State confidentiality laws, or Client, as private. By entering information into HMIS and not designating it as private, Agency represents that it has the authority to designate such information for sharing.
- e) To the extent that information entered by Agency into HMIS is or becomes subject to additional restrictions, Agency will immediately inform Administrator in writing of such restrictions, with specificity, including statutory and regulatory citations.

6. **Information Collection, Release and Sharing Consent.**

- a) **Collection of Client Identified information:** Agency shall collect Client Identified Information only when appropriate to the purposes for which the information is obtained or when required by law. An Agency must collect client information by lawful and fair means and with the knowledge and consent of Client or his/her legal guardian.
- b) **Obtaining Client Consent:** In obtaining Client consent, each adult Client in the household must sign the MCHMIS Client Acknowledgement for Electronic Data Collection to indicate consent to enter Client Identified Information into HMIS. An unaccompanied youth may sign the consent form for themselves.
 - (i) Telephonic consent from the individual may temporarily be substituted for written consent provided that written consent is obtained the first time Client is physically present at Agency.
 - (ii) Client may withdraw or revoke consent for Identified Information collection by signing the MC HMIS Revocation of Consent, attached hereto as **Exhibit D**. If Client revokes their consent, Agency is responsible for immediately contacting Administrator and making appropriate data modifications in HMIS to ensure that Identified Information will not be shared with other Partner Agencies prospectively. Administrator shall make every attempt to remove access to all Identifying Information about that client within 24 hours.

- (iii) This information is being gathered for the collection and maintenance of a research database and data repository. The consent is in effect until Client revokes the consent in writing.
7. **No Conditioning of Services.** Agency will not condition any services upon or decline to provide any services to a Client based upon a Client's refusal to allow entry of Identified Information into MC HMIS.
8. **Client Inspection/Correction.** Agency will allow a Client to inspect and obtain a copy of his/her own personal information as it was entered. Agency will also allow a Client to correct information that is inaccurate. Corrections may be made by way of a new entry that is in addition to, but is not a replacement for, an older entry.
9. **Security.** Agency will maintain security and confidentiality of HMIS information and is responsible for the actions of its users and for their training and supervision. Among the steps Agency will take to maintain security and confidentiality are:
- a) **Access:** Agency will permit access to HMIS or information obtained from it only to authorized Agency staff who need access to HMIS for legitimate business purposes (such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements). Agency will limit the access of such staff to only those records that are immediately relevant to their work assignments.
 - b) **User Policy:** Prior to permitting any user to access HMIS, Agency (i) will require the user to be familiar with all security provisions of the MC HMIS Policies and Procedures and (ii) is responsible for compliance with the policy by all Agency MC HMIS users.
 - c) **Computers:** Security for data maintained in HMIS depends on a secure computing environment. Computer security is adapted from relevant provisions of the Department of Housing and Urban Development's (HUD) "Homeless Management Information Systems (HMIS) Data and Technical Standards Notice" (Docket No. FR4848-N-01; see <http://www.hud.gov/offices/cpd/homeless/hmis/standards/index.cfm>). Agencies are encouraged to directly consult that document for complete documentation of HUD's standards relating to HMIS.
 - d) **Passwords:** Agency will permit access to HMIS only with use of a User ID and password, which the user may not share with others. Written information pertaining to user access (e.g. username and password) shall not be stored or displayed in any publicly accessible location.
 - e) **Training/Assistance:** Agency will permit access to HMIS only after the authorized user receives appropriate confidentiality, security and quality training. Agency will participate in such training as is provided from time to time by Coming Home. Coming Home will be reasonably available during weekday

business hours for technical assistance (i.e., troubleshooting and report generation).

- f) **Records:** Agency must develop and adopt policies governing the retention of records (paper or electronic) containing Identifying Information derived from a Homeless Management Information system. The policy must define how, and how long, records, including signed copies of the Client Acknowledgement for Electronic Data Collection, are retained after they are no longer being actively utilized, and the process that will be used to destroy the records to prevent the release of Identifying Information. The policy must require the retention of records for seven (7) years and the destruction of the records derived from MC HMIS no longer than seven years after the last day the person was served by Agency.
- g) **Breach:** In the event of a breach of system security or client confidentiality, Agency shall notify the Administrator within 24 hours. Agency shall enter a period of probation, during which technical assistance shall be provided to help Agency prevent further breaches. Probation shall remain in effect until Administrator and or HUD has evaluated the security and confidentiality measures and found them compliant with the policies stated in this Agreement and the Policies and Procedures.

10. **Information Entry Standards.**

- a) Information entered into HMIS by Agency will be truthful, accurate and complete to the best of Agency's knowledge.
- b) Agency will **not** solicit from Clients or enter information about Clients into the HMIS database unless the information is required for a legitimate business purpose such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements.
- c) Agency will only enter information into MC HMIS database with respect to individuals that it serves or intends to serve, including through referral.
- d) Agency shall consistently enter information into the MC HMIS database and shall strive for real-time, or close to real-time data entry. Agency will make every attempt to enter all data for a particular week by the end of that week. In no event shall Agency enter data later than five (5) days post receiving the data from the Client.

11. **MC HMIS Policy Review Committee.** Coming Home will consult with the Policy Review Committee from time to time regarding issues such as revision to the form of this Agreement and the Policies and Procedures. Written Agency complaints to Coming Home that are not resolved may be forwarded to the Policy Review Committee, which will try to reach a voluntary resolution of the complaint.

12. **Limitation of Liability and Indemnification.** No party to this Agreement shall assume any additional liability of any kind due to its execution of this agreement for participation in MC HMIS. It is the intent of the parties that each party shall remain liable, to the extent provided by law, regarding its own acts and omissions; but that no party shall assume additional liability on its own behalf or liability for the acts of any other person or entity except for the acts and omissions of their own employees, volunteers, agents or contractors through participation in HMIS. Specifically, Agency agrees that it is solely responsible for making sure its notices, forms and other HMIS documentation meets HUD standards. Agency shall not rely upon the Administrator's review and shall hold the Administrator, its staff, officers, members and affiliates, harmless from and against any and all claims for damages, losses, liabilities, costs or reasonable expenses related to privacy issues and HUD requirements under this Agreement. Coming Home shall not be held liable to Agency for any cessation, delay or interruption of services, nor for any malfunction of hardware, software or equipment. The parties specifically agree that this agreement is for the benefit of the parties only and that this agreement creates no rights in any third party.
13. **Disclaimer of Warranties.** Coming Home makes no warranties, express or implied, including the warranties of merchantability and fitness for a particular purpose, to Agency or any other person or entity as to the services of the HMIS or any other matter.
14. **Term and Termination.**
- a) This Agreement shall be effective as of the Effective Date and otherwise coterminous with the Bowman System End User Agreement in **Exhibit A**, as it may be modified in the future.
 - b) Administrator may terminate this agreement, for cause, if it determines that the Agency has violated any material term, after having given Agency clear notice of the violation and reasonable opportunity to cure if, in Administrator's sole discretion, cure is possible.
 - c) Agency may terminate this Agreement for any reason upon thirty (30) days prior written notice. No fees will be refunded.
 - d) If this Agreement is terminated, Agency will no longer have access to MC HMIS. Administrator and the remaining Partner Agencies will maintain their right to use all of the Client information previously entered by Agency except to the extent a restriction is imposed by Client or law.
 - e) Upon termination of this agreement for any reason, Agency shall immediately return or destroy all Identified Information received from the MC HMIS, or created or received by Agency on behalf of MC HMIS. This provision shall apply to Identified Information that is in the possession of subcontractors or agents of Agency.
 - f) In the event that Agency determines that returning or destroying the Identified Information is infeasible, Agency shall notify the Administrator of the conditions

that make return or destruction infeasible within two weeks in writing to the Administrator. Upon notification that immediate return or destruction of the Identified Information is infeasible, Agency shall extend the protections of this Agreement to such information and limit further uses and disclosures of the information to those purposes that make the return or destruction infeasible, as long as Agency maintains the information.

15. **Assignability.** Participant may not assign this Agreement or any of its obligations hereunder without the prior written consent of the Coming Home. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective legal representatives, successors and assigns.
16. **Modifications.** Administrator reserves the right to modify this Agreement at any time. Coming Home shall provide fifteen (15) days prior written notice to Agency of any modification made by it.
17. **Availability of Funding.** Coming Home's obligations hereunder shall cease immediately, without penalty, if funding is no longer available to meet such obligations.
18. **Agency's Representations and Warranties.** Agency represents and warrants that it has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder and to manage and control and ensure each individual or entity that Agency authorizes, permits or allows access to the MC HMIS or related services and equipment or facilities also complies with the terms of this Agreement in exercising such individual's access.
19. **Administrator's Representations and Warranties.** Administrator represents and warrants that it has all the necessary power and authority to enter this Agreement and to perform all of its obligations hereunder.
20. **Interpretation.** The construction of this Agreement shall not be construed against the Party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both Parties in consultation with their respective counsel.
21. **Choice of Laws.** This Agreement is governed by the laws of the State of New Jersey, and Federal law, as applicable, without regard to the choice of law provisions of those bodies of law.
22. **Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, between the Parties with respect to the subject matter of this Agreement and the transactions contemplated by this Agreement.
23. **Further Assurances.** The Parties shall cooperate with each other and execute any documents reasonably necessary to carry out the intent and purpose of this Agreement.

24. **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void by a court of competent jurisdiction, the provision shall in no way affect any other provision, covenant or condition of this Agreement.
25. **Authorizing the Action.** This Agreement shall become effective, and a HMIS account established for Agency, only upon execution of this document by an authorized person of Agency.

[The next page is the signature page.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Agency: _____

By: _____

Name: _____

Title: _____

Date: _____

Coming Home of Middlesex County, Inc.:

By: _____

Name: _____

Title: _____

Date: _____



EXHIBIT A

BOWMAN SYSTEM END USER AGREEMENT

END USER AGREEMENT BETWEEN MC HMIS USER AND BOWMAN SYSTEMS

Important-Read Carefully: This End-User Agreement ("EULA") is a legal agreement between you (either an individual or a single entity, "End User") and Bowman Systems (Bowman) for use of "Software Product" as that term is defined in the Software and Services Master Agreement (Master Agreement) between Bowman and Coming Home of Middlesex County o/b/o the Middlesex County Continuum of Care (CLIENT), to which this EULA is an exhibit. The Software Product includes programming code and associated online documentation. By using the Software Product, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Bowman is unwilling to license the Software Product to you. This software is used as part of the Middlesex County Homeless Management Information System ("MC HMIS").

Software Product License

The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software Product is licensed, not sold.

NOW, THEREFORE, in consideration of the premises and in further consideration of the performance of the terms and provisions herein contained, Bowman and END USER do hereby contract and agree as follows:

(1) **Term.** END USER agrees to the contract for the length of the terms stated in the written and signed contract between CLIENT and Bowman, beginning upon acceptance of this EULA by signature. This agreement will automatically renew for successive 24-month periods unless cancelled or modified (i) by END USER within thirty (30) days of the end of the term or (ii) by Bowman within one-hundred eighty (180) days of the end of the term. Any modifications must be submitted in writing to the other party and agreed to by the other party.

(2) **Grant of License.** This EULA grants you the following rights:

a. You may use one copy of the Software Product

b. User licenses must be obtained for each individual person using the Software Product. Sharing of user licenses is expressly prohibited.

(3) **Warranties.** In the event of loss of data due to errors and or negligence on the part of Bowman, Bowman will correct program error in a timely fashion at no additional cost to END USER. Other than described in the Master Agreement, Bowman makes no express or implied warranties and makes no implied warranty of merchantability or fitness for a particular purpose. In no event shall Bowman be

liable for indirect, consequential, punitive or special damages. Bowman shall not be responsible for loss of data resulting from delays, non-deliveries, miss-deliveries, service interruptions, or other interruptions caused by END USER or any other person or entity.

(4) **Trade Secret.** END USER hereby acknowledges that the source code, graphics, and html related to services and products provided by Bowman under this EULA constitutes a trade secret of Bowman, and as such is protected by civil and criminal law, is very valuable to Bowman, and that its use must be carefully and continuously controlled. END USER agrees to use the highest standard of diligence to ensure the confidentiality of the source code, and will prohibit the unauthorized access to, use or duplication of any of the source code. END USER agrees to provide all source codes the same security as END USER provides for its most confidential materials. END USER will not cause, permit, nor allow the code or materials provided by Bowman to be copied, modified, duplicated, transcribed, sold to, revealed to, or used by any other person, firm or company without prior written consent of Bowman. END USER agrees to notify Bowman immediately of the unauthorized possession, use or knowledge of any item supplied under this EULA by any person or organization not authorized by this EULA to have such possession, use or knowledge, and will cooperate fully with Bowman in any litigation against third parties deemed necessary by Bowman to protect its proprietary rights. END USER's compliance with the above shall not be construed in any way as a waiver of Bowman's right to recover damages or obtain other relief against END USER for its negligent or intentional harm to Bowman's proprietary rights or for breach of contractual rights. If END USER attempts or allows others to attempt to use, copy, duplicate, transcribe, or convey the items supplied by Bowman pursuant to this EULA, in a manner contrary to the terms of this EULA or in derogation of Bowman proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, Bowman shall have, in addition to any other remedies available to it at law or equity, the right to injunctive relief enjoining such actions, END USER hereby acknowledges that irreparable harm will occur to Bowman and that other remedies are inadequate.

(5) **Compliance with Laws.** END USER assumes all responsibility in assuring compliance with all regulations relating to END USER's use of the product and services.

(6) **U.S. Government Restricted Rights.** The Software Product and documentation are provided with Restricted Rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Bowman Systems L.L.C. / 333 Texas Street, Suite 300 / Shreveport, LA 71101.

(7) **Confidentiality.** Bowman and END USER each agree that all information pertaining to the terms and conditions of this EULA and CLIENT Pricing in the Master Agreement, whether before the effective date or during the term of this EULA, shall be received in strict confidence, and that no such information shall be disclosed by the recipient party, its agents or employees without prior written consent of the other party, unless such information is publicly available from other than a breach of these provisions. Each party agrees to take all reasonable precautions to prevent the disclosure to outside parties of such

information, except as may be necessary by reason of legal, accounting or regulatory requirement beyond the reasonable control of Bowman and END USER.

(8) **Use of Server (for END USER's hosted application).** BOWMAN will host END USER's application in Bowman's data center on equipment provided by BOWMAN. Data input by END USER is property of END USER. Bowman's server may not be used for illegal purposes, or in support of illegal activities. Activities which are prohibited include, but are not limited to unauthorized copying of material, transmittal of chain letters, threatening bodily harm or property damage of individual groups, making fraudulent offers of products, items, or services originating from END USER's account, attempting to access the accounts of others or attempting to penetrate Bowman's systems whether or not the intrusion results in loss of data, or distributing viruses or bulk e-mail through the Bowman System.

(9) **Modification.** END USER may not modify source code without written consent of Bowman.

(10) **Limitation of Actions.** No action arising out of this EULA may be brought by END USER or Bowman more than two (2) years after the cause of action has occurred.

(11) **Headings.** The headings of each paragraph contained herein are provided only for convenience and shall not be deemed controlling.

(12) **Binding.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.

(13) **Assignability.** This Agreement shall not be transferable or assignable by END USER or Bowman without the prior written consent of the other party, which consent shall not be unreasonably withheld. END USER acknowledges that Bowman may require any assignee of END USER to renegotiate the terms of this Agreement.

(14) **Governing Law.** This Agreement shall be governed by, construed and enforced under, and subject to, the laws of the State of New Jersey. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement, which shall be in full force and effect.

(15) **Arbitration.** ANY DISPUTE BETWEEN OR AMONG THE PARTIES REGARDING THE VALIDITY OF THIS AGREEMENT, THE INTERPRETATION OF THIS AGREEMENT, OR ANY PARTY'S RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE SUBMITTED TO, DETERMINED AND SETTLED BY FORMAL ARBITRATION IN NEW BRUNSWICK, NEW JERSEY., PURSUANT TO THE LAWS OF THE STATE OF NEW JERSEY AND THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") GOVERNING COMMERCIAL DISPUTES AS THE SAME MAY BE IN EFFECT FROM TIME TO TIME. THE PARTIES AGREE TO BE BOUND AND TO ABIDE BY THE DECISION OF THE ARBITRATOR, WHICH SHALL BE FINAL. THE PARTIES SHALL PROCEED DILIGENTLY AND IN GOOD FAITH IN ORDER THAT THE ARBITRAL AWARD SHALL BE MADE AS PROMPTLY AS POSSIBLE. THE ABSENCE OR DEFAULT OF A PARTY SHALL NOT PREVENT

OR HINDER THE ARBITRATION PROCEEDING AT ANY OR ALL OF ITS STAGES. EACH PARTY SHALL BEAR ITS OWN COSTS IN THE ARBITRATION EXCEPT THAT THEY SHALL EACH PAY ONE-HALF OF THE HOURLY FEE CHARGED BY THE ARBITRATOR. UPON THE FAILURE OF EITHER PARTY TO ABIDE BY AN ARBITRATION DECISION, ANY PARTY MAY FILE SUIT TO ENFORCE ANY ARBITRATION AWARD, AND, FOR THIS PURPOSE, THE PARTIES CONSENT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN NEW BRUNSWICK, NJ. THE ARBITRATOR SHALL HAVE AN UNDERSTANDING OF THE BUSINESS ENCOMPASSED BY THE TERMS OF THIS AGREEMENT; TO SUCH AN EXTENT THAT SUCH ARBITRATOR WILL HAVE AT LEAST A GENERAL BACKGROUND OF KNOWLEDGE AND EXPERIENCE IN THE PARTICULAR AREA OF THIS AGREEMENT WHICH MAY BE IN DISAGREEMENT. AT THE TIME A PARTY INITIATES AN ARBITRATION PROCEEDING, SUCH PARTY SHALL SUGGEST A MINIMUM OF FIVE (5) QUALIFIED ARBITRATORS. SUCH PROCEEDINGS SHALL NOT BE CONSIDERED EFFECTIVELY INITIATED UNTIL THE INITIATING PARTY HAS SO NAMED POTENTIAL ARBITRATORS. NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF SUCH A REQUEST FOR ARBITRATION IN WRITING, INCLUDING THE NAME OF THE INITIATING PARTY'S LIST OF POTENTIAL ARBITRATORS, THE RESPONDING PARTY SHALL RESPOND TO THE INITIATING PARTY'S SUGGESTED LIST BY EITHER ACCEPTING ONE OF THE INITIATING PARTY'S SUGGESTED ARBITRATORS, IF ONE ON THE LIST IS ACCEPTABLE, OR BY SUGGESTING OTHER POTENTIAL ARBITRATORS. THE INITIATING PARTY MUST RESPOND TO THE RESPONDING PARTY'S POTENTIAL ARBITRATORS LIST NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF SUCH LIST. IF THE PARTIES FAIL TO AGREE UPON AN ARBITRATOR WITHIN TEN (10) DAYS FROM THE DATE OF THE INITIATING PARTY'S RECEIPT OF RESPONDING PARTY'S ALTERNATE LIST, THE ARBITRATOR SHALL BE SELECTED BY THE AAA UPON THE APPLICATION OF THE INITIATING PARTY. THEREAFTER THE ARBITRATION PROCEEDING SHALL BE CONDUCTED PURSUANT TO AAA COMMERCIAL RULES. THE ARBITRATOR SHALL BASE HIS/HER DECISION ON THE APPLICABLE LAW, INCLUDING ANY LAWS RELATED TO STATUTES OF LIMITATION. THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO GRANT OR AWARD, AND SHALL NOT GRANT OR AWARD, ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, OR EXEMPLARY DAMAGES OR ANY FEES FOR ATTORNEYS, ACCOUNTANTS OR EXPERT WITNESSES, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

(16) Limitation of Liability. In the event of loss of data due to errors and or negligence on the part of Bowman, Bowman will correct the program error in a timely fashion at no additional cost to END USER. Other than as herein above described, Bowman shall in no event have any liability to END USER for losses sustained or liabilities incurred except as may result from negligence or willful misconduct. Further, any liability of Bowman for any loss, damages, or costs hereunder shall be limited to the actual direct damages incurred by END USER, but in no event shall the aggregate of liability exceed the total fees paid by END USER to Bowman under paragraph 3 of the Master Agreement, nor shall any amount of liability include any indirect, consequential, punitive or special damages incurred by END USER. Bowman shall not be responsible for loss of data resulting from delays, non-deliveries, mis-deliveries, service interruptions, or other interruptions caused by END USER or any other person or entity.

(17) **Force Majeure.** Bowman shall not be liable to END USER or any other person or entity for any loss or damage for delay in performance, or for nonperformance, due to causes not reasonably within its control, such as, but not limited to, an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, public disaster, lightning, fire, storm, flood or other act of nature, explosion, judicial orders/decrees, governmental laws/regulations, governmental action, governmental delay, restrain or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of Bowman.

(18) **Notice.** Any notices under this EULA shall be written and shall be deemed delivered when actually received, or three days after they are deposited with the United States Postal Services, certified mail return receipt requested when addressed to the other party at its above address, which may not be changed without written notice.

(19) **Termination.** Without prejudice to any other rights, Bowman may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such an event, you must destroy all copies of this Software Product and all of its component parts.

(20) **Taxonomy.** The structure of the Taxonomy index and definitions of the terms contained herein were originally published in A Taxonomy of Human Services: A Conceptual Framework with Standardized Terminology and Definitions for the Field by the Information and Referral federation of Los Angeles County, Inc., 3035 Tyler Ave, El Monte, CA 91731; Copyright 1983, 1987, 1991. No part of this listing of human services terms and definitions may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electrical, mechanical, photocopying, recording or otherwise without the prior written permission of the Information and Referral Federation of Los Angeles County, Inc.

(21) **Severability.** The invalidity of any one or more of the provisions of this EULA shall not affect the remaining portions of this EULA, and in case of any such invalidity, this EULA shall be construed as if the invalid provisions had not been inserted.

IN WITNESS WHEREOF, the End User has duly executed this Agreement.

Agency: _____

By: _____
(signature)

Name: _____

Title: _____

Date: _____

EXHIBIT B

MC HMIS POLICIES AND PROCEDURES

Sent Separately. Please include.

EXHIBIT C

[AGENCY NAME]

CLIENT ACKNOWLEDGEMENT FOR ELECTRONIC DATA COLLECTION

When you sign this form, it shows that you understand the following:

We collect personal information about the people we serve in a computer system called the Middlesex County Homeless Management Information System (“MC HMIS”). The MC HMIS is used by agencies which provide prevention, shelter, and housing related services in Middlesex County, NJ. **Agencies using the MC HMIS comply with all the requirements related to keeping your personal information private and secure.**

We use the personal information collected to better assist you by improving our programs and services. Our funders require us to collect some of your personal information in order to better assist you by funding programs that will meet your needs.

Your information will help us provide you with the most appropriate services for you through our program or through programs offered by other agencies.

If you are applying for County, State, or Federal cash disbursements (e.g. SSH, TANF, EA or ESG), such application and receipt of disbursements will be shared with MC HMIS users and State agencies.

You have the right, at any time, to choose to not share any part(s) of your personal information with MC HMIS participating agencies, with the exception of cash disbursements you may receive as set forth above. All records will be deleted from the system after 7 years of inactivity.

You have a right to review the information that we have about you. If you find mistakes, you can ask us to correct them. You have a right to file a complaint with the management of the program from which you are receiving services if you feel that your privacy rights have been violated.

If you would like a copy of our privacy policy, our agency staff will provide one.

SIGNATURE OF CLIENT OR GUARDIAN

DATE

SIGNATURE OF AGENCY WITNESS

DATE

EXHIBIT D

MIDDLESEX COUNTY HMIS - CLIENT REVOCATION OF CONSENT FORM

I, _____, revoke my permission for _____ (agency) to have or enter **personally identifying information** about me in the MC HMIS.

Identifying information will be removed from the system:

- Name (*if provided*)
- Social Security Number (*if provided*)
- Day and Month of Birth (*if provided*)
- Last Permanent Address (*if provided*)
- Phone Number (*if provided*)
- Ethnicity and Race (*if provided*)

(Please identify any of the above information that you consent to remain in the system.)

All non-identifying information will remain in System:

- Gender
- Year of Birth
- Any other non-identifying information

I understand that I will be able to get the same services from this agency whether I allow them to enter identifying personal information about me into the HMIS or not.

Client or Guardian Signature

Date

Relationship to Client

Print Name

Agency Witness Signature

Date

Print Name